

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

JOHN RESTIVO, DENNIS HALSTEAD, MELISSA)
LULLO, JASON HALSTEAD, TAYLOR HALSTEAD,)
and HEATHER HALSTEAD,)
)
Plaintiffs,)
)
-against-)
)
NASSAU COUNTY, CAROLANN HESSEMAN, AS)
EXECUTRIX FOR THE ESTATE OF JOSEPH VOLPE,)
in his individual capacity, ROBERT DEMPSEY,)
in his individual capacity, FRANK SIRIANNI,)
in his individual capacity, MILTON GRUBER,)
in his individual capacity, HARRY WALTMAN)
in his individual capacity ALBERT MARTINO,)
in his individual capacity, CHARLIE FRAAS,)
in his individual capacity, THOMAS ALLAN)
in his individual capacity, RICHARD BRUSA,)
in his individual capacity, VINCENT DONNELLY,)
in his individual capacity, MICHAEL)
CONNAUGHTON, in his individual capacity,)
WAYNE BIRDSALL, in his individual capacity,)
WILLIAM DIEHL, in his individual capacity,)
JACK SHARKEY, in his individual capacity,)
DANIEL PERRINO, in his individual capacity,)
ANTHONY KOZIER, in his individual capacity,)
Detective Sergeant CAMPBELL, (Shield #48),)
in his individual capacity, SEAN SPILLANE,)
in his individual capacity, RICHARD ROE)
SUPERVISORS #1-10, in their individual)
capacities,)
)
Defendants.)

**MOTION FOR A
WRITTEN JUROR
PLEDGE**

06-CV-6720(JS)(WDW)

“Due process means a jury capable and willing to decide the case solely on the evidence before it.” *Smith v. Phillips*, 455 U.S. 209, 217 (1982); *see also Turner v. Louisiana*, 379 U.S. 466, 472–73 (1965) (explaining that the Constitution requires the jury’s verdict to be based solely on evidence developed at trial). As the ready accessibility of information on the

internet—through search engines and social media—grows, juror access to outside information not developed and presented at trial also expands. Unfortunately, as the parties and the Court are well aware, repeated instructions not to engage in outside research are not always sufficient to prevent such external research. *See* 11/29/12 Tr. at 6191:15–92:3 (dismissing juror for conducting outside research).

Plaintiffs have learned that other courts have dealt with this problem by having jurors sign a written pledge to follow the court’s instructions. Particularly, Plaintiffs understand that Judge Shira A. Scheindlin required jurors to sign a juror pledge during a criminal trial in 2011. Plaintiffs have attached a sample pledge, which we understand tracks the pledge used by Judge Scheindlin at that trial, as Exhibit A.

In an effort to inoculate this trial against any misconduct that could lead to yet a third trial of this case, Plaintiffs respectfully request the Court require each impaneled juror to sign a written pledge to follow the Court’s instructions and, specifically, not to engage in outside internet research. Defendants have stated that they oppose this motion.

Dated: March 14, 2014
New York, NY

Respectfully submitted,

/s/ Anna Benvenutti Hoffmann
Barry C. Scheck
Peter Neufeld
Nick Brustein
Anna Benvenutti Hoffmann
Alexandra Lampert
NEUFELD SCHECK & BRUSTIN, LLP
99 Hudson St., 8th Floor
New York, NY 10013

Attorneys for Plaintiffs
John Restivo and Dennis Halstead